

August 2, 2017

Mr. Devin M. Leary
Human & Rohde, Inc.
516 Virginia Avenue
Towson, Maryland 21286

Re: 401 Greenpoint Road
Forest Conservation Variance
Tracking # 03-17-2486

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on May 31, 2017. This request proposes to remove five of the twenty four specimen trees onsite for the creation of a three-lot residential subdivision on the 5.4-acre property. Of the specimen trees to be removed, only one, a 34 inch DBH Tuliptree (*Liriodendron tulipifera*), is in fair condition. The other four are in poor condition. The remaining nineteen specimen trees onsite would not be impacted as part of this subdivision proposal.

The removal of the specimen trees is due to the proposed construction of two, 2-story dwellings on two of the three lots. The third lot will contain the existing residence, Mayfair, which is an historic home (landmark #BA-1521). EPS staff note that seventeen of the nineteen remaining specimen trees will be protected in Forest Buffer and/or Forest Conservation Easements.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of beneficial use of his property. We acknowledge that there is an existing dwelling onsite and that a

Mr. Devin M. Leary
401 Greenpoint Road
Forest Conservation Variance
August 2, 2017
Page 2 of 5

two-lot subdivision could be developed without impacting any of the specimen trees. While this would not realize the maximum development potential of the property, beneficial use would be obtained nonetheless. Therefore, full application of the law to the entire property would not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. We find that rather than the general conditions of the neighborhood, the petitioner's plight is largely due to the number and locations of specimen trees across the property. Therefore, the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The granting of this special variance will not alter the essential character of the surrounding neighborhood, as the proposed minor subdivision is situated between multi-family townhouses to the north and single-family residences to the south. Furthermore, 0.5 acre of the property will be placed in either Forest Conservation Easement or Forest Buffer and Forest Conservation Easement that would help screen the residential development from surrounding properties. Consequently, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. In addition to the Forest Conservation Law, this development project must also comply with the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains. That will entail recordation of a Forest Buffer Easement and its Declaration of Protective Covenants. Moreover, none of the specimen trees to be removed are in the Forest Buffer Easement, and no impacts to the Forest Buffer Easement are proposed. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The request is based solely on the fact that the specimen trees are clustered along both the existing driveway to be widened and the buildable lot areas. Furthermore, the petitioner has not taken any actions on the property necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Allowing the removal of five of

Mr. Devin M. Leary
401 Greenpoint Road
Forest Conservation Variance
August 2, 2017
Page 3 of 5

twenty four specimen trees on this residential property for the development of three lots would be consistent with the spirit and intent of the law. This is especially true when considering that impacts to forest and specimen tree will be mitigated, that four of those five trees to be removed are in poor condition, and that the remaining specimen trees will be adequately protected during and after construction. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. A \$1,021.00 fee-in-lieu of mitigation for the removal of the 34-inch specimen Tuliptree in fair condition shall be paid to Baltimore County prior to this Department's approval of the minor subdivision. Fee checks must be made payable to Baltimore County.
2. The 0.5-acre combined afforestation and reforestation requirement shall be met either at an EPS-approved forest retention bank or by payment of a fee in lieu of planting prior to EPS approval of the minor subdivision plan or any Baltimore County permit application, whichever comes first. If your client opts to pay the fee, that amount would be \$10,890.00. A letter authorizing use of an offsite forest retention bank has also been enclosed, should your client choose that option.
3. Blaze orange high visibility fence shall be installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of any specimen tree to remain, Forest Conservation Easement, or Forest Buffer and Forest Conservation Easement. This protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on any sediment control plan and the final forest conservation plan (FCP). Installation of this fence shall be inspected and approved by EPS staff prior to issuance of any grading or building permit.
4. The outer limits of both the 0.3-acre Forest Buffer and Forest Conservation Easement and the 0.2-acre Forest Conservation Easement shall be permanently posted at 100-foot intervals or at any turning point with "Forest Buffer-Do Not Disturb" and "Forest Conservation-Do Not Disturb" signs in accordance with an approved FCP. The signs are available from private sign contractors and must be installed prior to issuance of any permits for the project or by February 2, 2018, whichever comes first.

Mr. Devin M. Leary
401 Greenpoint Road
Forest Conservation Variance
August 2, 2017
Page 4 of 5

5. The following notes must appear on all subsequent plans for this project:
 - “A special variance was granted on August 2, 2017 to Baltimore County’s Forest Conservation Law to allow removal of five specimen trees onsite. Conditions were placed on this variance, including paying a fee-in-lieu of \$1,021.00 and protecting the remaining specimen trees onsite.”
 - “A special variance to Baltimore County’s Forest Conservation Law may be required for future removal of any specimen trees within this property.”
6. A final FCP mylar addressing the variance conditions above as well as the requirements of Section 33-6-110 must be submitted to EPS and approved prior to minor subdivision plan approval.
7. This variance approval does not exempt future development activities at this site from compliance with Baltimore County’s Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owner sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Michael S. Kulis at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

VJG/msk

Enclosure

c. Marian Honeczy, Maryland DNR

Mr. Devin M. Leary
401 Greenpoint Road
Forest Conservation Variance
August 2, 2017
Page 5 of 5

I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Property Owner's Signature

Date

Property Owner's Printed Name